

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS****TITLE 8: Chapter 4, Subchapter 7, Article 10, Section 3385
of the General Industry Safety Orders****Update of National Consensus Standard Reference for Protective Footwear****SUMMARY**

Existing General Industry Safety Orders (GISO), Section 3385 contains requirements for foot protection and stipulates that appropriate foot protection shall be worn when employees are exposed to various foot hazards and prohibits the use of defective or inappropriate footwear. This section also requires that protective footwear meet the design, construction and testing requirements of the American National Standard Institute (ANSI) Z41 standards.

The ANSI Z41 Committee on Personal Protection-Protective Footwear, which developed the currently referenced standard in Section 3385, merged with American Society of Testing Materials International's (ASTM) Committee F13 on Safety and Traction for Footwear. This merger dissolved Z41 as an ANSI Committee and designated the ASTM Committee F13 on Pedestrian/Walkway Safety and Footwear to undertake the oversight and redrafting of the ANSI Z41 performance requirements and test method on personal protection on protective footwear. In April 2005, the 1999 version of the Z41 standard was withdrawn as ASTM announced two new replacement ASTM standards, F 2412-05, Standard Test Methods for Foot Protection, and F 2413-05, Standard Specification for Performance Requirements for Foot Protection. As a result, the new protective footwear purchased by employers and employees conflict with the existing Section 3385, as the referenced ANSI Z41 standard no longer exists, and footwear is no longer labeled to be in compliance with ANSI Z41, as they are labeled to be in compliance with the two proposed referenced ASTM standards.

The ASTM F 2412 and F 2413 continue to use safety and performance criteria previously provided in the ANSI Z41 and help protect against toe, metatarsal, and foot bottom injuries. The new ASTM standards also include test methods and performance requirements for footwear providing electric shock resistance, conductive and static dissipative and dielectric properties, as well as chain saw protection. The new ASTM F 2412-05 standard contains minimal changes from the withdrawn ANSI Z41 1999 standard (the most current version) with regard to test methodology. The new ASTM F 2413-05 standard proposed for inclusion in Section 3385 is enhanced with expanded information on upper class 50 and class 75 toe protection performance

requirements. The major performance characteristic changes between the new ASTM standards and the old ANSI standard are the removal of Type II for Static Dissipative and Class 30 for Impact and Compression requirements. Protective footwear manufacturers manufacture and test their products to the ASTM standards and have begun to label them as such.

Federal OSHA's comparable standards contained in 29CFR 1910.136, continue to reference an outdated ANSI Z41.1-1967 standard which is no longer available from ANSI to the general public. Alternatively, the federal standard at 29CFR 1910.136(b)(1) allows employers to utilize protective footwear that is proven equally effective by the employer; an alternative practice that is not permitted in California.

The proposal also updates the existing ANSI Z41-1967 standard referenced in subsection (c)(2) to the 1999 edition, permitting the continued use of ANSI Z41.1-1999 protective footwear purchased prior to the effective date of the proposal, meeting the ANSI Z41 standard, or footwear meeting the requirements of the new ASTM standards. As previously noted, the 1967 ANSI standard is no longer available. In addition, since employers typically call for the replacement of protective footwear at least once a year, updating the reference is reasonable.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 3385. Foot Protection.

Existing Section 3385 consists of three subsections which contain requirements for foot protection and stipulates that appropriate foot protection shall be worn when employees are exposed to various foot hazards and prohibits the use of defective or inappropriate footwear. This section also requires that protective footwear purchased after January 12, 1995, meet the design, construction and testing requirements of the American National Standard Institute (ANSI) Z41-1991 standards and that protective footwear purchased on or before January 12, 1995, meet the requirements of the ANSI Z4.1-1967 standard.

Amendments are proposed to subsection (c)(1) to require protective footwear purchased after the effective date of the proposal¹ to meet the requirements and specifications of the ASTM F 2412 and the ASTM F 2413, 2005 standards. Amendments are proposed for subsection (c)(2) to delete the outdated Z41.1-1967 standard and require protective footwear purchased on or before the effective date of the proposal to meet either the ANSI Z41-1999 standard or the ASTM F 2412 and 2413, 2005 standards.

The proposed amendments are necessary to clarify to the employer what standards protective footwear must comply with depending on whether it was purchased before or after the effective date of the proposed amendments. The proposal is also necessary to permit the use of protective footwear designed, built and tested in accordance with the ANSI Z41-1999 standard.

¹ Upon review and approval of the proposed amendments, the California Office of Administrative Law will insert the effective date of the standard.

DOCUMENTS RELIED UPON

1. Electronic Mail (e-mail) transmission from Mr. Gilbert Martinez, Division of Occupational Safety and Health to the Occupational Safety and Health Standards Board dated May 9, 2006, re: ASTM vs. ANSI, Protective Footwear, Section 3385
2. American National Standard Institute (ANSI), Z41-1991, American National Standard for Personal Protection-Protective Footwear
3. American National Standard (ANSI) for men's safety toe footwear, Z41.1-1967

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

1. American National Standard Institute (ANSI), Z41-1999, American National Standard for Personal Protection-Protective Footwear
2. American Society for Testing of Materials (ASTM), Designation F 2412-05, Standard Test Methods for Foot Protection, Copyright ASTM International, 100 Bar Harbor Drive, P.O. Box C700, West Conshohocken, PA
3. ASTM, Designation F 2413-05, Standard Specification for Performance Requirements for Foot Protection, Copyright ASTM International, 100 Bar Harbor Drive, P.O. Box C700, West Conshohocken, PA

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standards does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private employers - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.